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C O N F I D E N T I A L SECTION 01 OF 03 THE HAGUE 002793

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DEPARTMENT FOR S/WCI - PROSPER/RICHARD, EUR - STEPHENS,
EUR/SCE - GAUDIOSI/GREGORIAN/MITCHELL, L/EUR - LAHNE, L/AF
- GTAFT. INR/WCAD - SEIDENSTRICKER/MORIN; USUN FOR
ROSTOW/WI...

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ROSTOW/WILLSON

E.O. 12958: DECL: FIVE YEARS AFTER ICTY CLOSURE

TAGS: [BK](#) [HR](#) [KAWC](#) [NL](#) [PHUM](#) [PREL](#) [SR](#) [ICTY](#)

SUBJECT: ICTY - TRIBUNAL OFFICIALS HIGHLIGHT CONCERNS ABOUT
SERB NONCOOPERATION AND BUDGET FREEZE IN MEETINGS WITH
S/WCI AMBASSADOR PROSPER AND EUR STEPHENS

Classified By: Clifton M. Johnson, Legal Counselor, Reason 1.5(b)-(d).

[11](#). (C) Summary. In a series of meetings on September 28 at the International Criminal Tribunal for the former Yugoslavia (ICTY), President Meron, Chief Prosecutor Del Ponte, and Registrar Holthuis struck consistent themes with Ambassador-at-Large for War Crimes Issues Pierre Prosper and EUR DAS for Southeast Europe Kathy Stephens. All ICTY officials lamented the continued lack of cooperation with Serbia and Montenegro on fugitives and welcomed the USG,s renewed tough message to Belgrade. ICTY officials were similarly receptive to efforts by the USG to coordinate a similar policy line with the Europeans, linking the EU accession process with progress on cooperation. While describing efforts to facilitate the transfer of cases to the region, ICTY officials underscored their deep concern about the continuing hiring freeze imposed on the Tribunal by the UN and noted its significant negative impact on the ICTY,s ability to meet completion strategy goals. End summary.

The Prosecution

[12](#). (C) Ambassador Prosper joined by EUR DAS Stephens, EUR/SCE officer Jennifer Mitchell and Embassy legal officers, opened their visit by meeting with Chief Prosecutor Carla Del Ponte and her senior staff. Prosper and Stephens expressed deep concern with the lack of cooperation by Belgrade and stressed the need to reevaluate current policy in the region in order to increase pressure and incentives on Belgrade to cooperate with the ICTY. Del Ponte welcomed this objective but expressed concern that earlier USG remarks about the possibility of transferring the four generals to Serbia for trial were premature, being used as a pretext by Belgrade to cease all efforts to bring about the transfer of fugitives below the Mladic level, and, more generally, encouraging Serb officials and fugitives to try to wait out the ICTY,s completion. Prosper explained that Belgrade had been given an opportunity to produce results and that the policy of showing an openness to support transfers back to the region for domestic trial "hasn,t worked to date." What is needed, he said, is a stronger message to "make clear in the region that noncooperation will result in extending the life of the Tribunal." Del Ponte and her staff supported the idea of a firmer message but advised that the USG should avoid stating specific requirements of cooperation because SAM would respond by only meeting those requirements, and then only to draw out the process of cooperation on those few things. Senior political adviser Jean-Daniel Ruch urged that the message should be, "you know what to do, start doing it."

[13](#). (C) Ruch said that he would urge his contacts in Brussels, on the staff of Javier Solana and Chris Patten, to reinforce the tough message on Belgrade,s cooperation. He pointed out that in June 2004, the EU had stated that as long as Mladic, Karadzic, and Gotovina remained at large, the Tribunal should not close its doors. Del Ponte welcomed Stephens,s focus on coordinating a tough message with the EU as "extremely important" and said she supported a unified message of the sort announced by the EU ministers and endorsed by Ambassador Prosper. Note. On October 4, Del Ponte met with Solana and urged him to deliver a stiff message to SAM on the need to cooperate fully in order for their to be progress on EU accession issues. End note.

[14](#). (C) Speaking to OTP,s overall frustration with Serb noncooperation, Del Ponte reported that, according to a conversation she had with the chairman of the National Council for Cooperation with the ICTY, Rasim Ljajic, "Kostunica believes the United States only wants Mladic and that is the reason they are not arresting the others." Chief of Investigations Patrick Lopez-Terres cited RS police sources who complain that the Belgrade police are not helping them. But he also expressed concern about the "complete radio silence" with respect to search operations conducted by Serb authorities and the lack of feedback with respect to fugitive information passed by the ICTY. Increasingly, he said, his office cannot track Belgrade,s work on fugitives.

The Court

[15](#). (SBU) President Theodor Meron, joined by chief of staff Larry Johnson, focused on the ICTY,s budget crisis, which he called a "real plague" on the Tribunal. Meron noted that the main result of the crisis is the hiring freeze. It has affected all of the Tribunal,s main activities, from judicial decisionmaking (although the Chambers received permission to fill nine vital clerkship positions, new vacancies have since arisen) to OTP investigations and prosecutions (OTP is hemorrhaging senior investigators and prosecutors to places like the Oil For Food investigation and the International Criminal Court and is unable to fill the vacancies) to transitioning cases to the region (OTP cannot

staff a new transition team to facilitate the transfer of cases to the region until it can fill vacancies). Meron urged the USG to provide its assessed contribution as soon as possible in order to convince U/SYG Bertini to lift the freeze. Meron was pleased to learn that the United States expected to make a 13 million USD contribution by early October and that another 10 million USD would follow this autumn. (Note. Post understands that both Russia and Japan, the other major contributors in arrears have now paid all or most of their outstanding balances. The US paid \$14.3 million in October and expects to pay the remaining balance of \$8.8 million shortly. End note.)

16. (C) Meron expressed concern that the BiH State Prosecutor's Special Department for Organized Crime and Corruption has complicated the process of creating the war crimes chamber in Sarajevo by issuing a war crimes indictment before the chamber has been established, thereby sending mixed signals regarding the readiness of BiH to adjudicate domestic war crimes cases. Prosper and Meron agreed that cooperation from local governments is a critical dimension in the success of the 11bis trials referred to the local courts. Meron said that the Tribunal must be "very careful" about the transfer of detainees who might be considered senior-level, not only because of the Security Council expectation that such persons would be tried in The Hague but also because of the signals that could send to senior-level fugitives. Meron also expressed a willingness to work with the USG in particular on urging Belgrade to develop domestic capacity to prosecute war crimes, noting that he had good relations with the local SAM Ambassador and other SAM officials.

The Registry

17. (SBU) Registrar Hans Holthuis echoed Meron in focusing on the hiring freeze, which has forced the Tribunal to maintain a fifteen (15) percent staff vacancy rate, well above the normal 3 to 4 percent rate. This includes positions lost to normal attrition that remain unfilled. Prosper indicated that he would follow-up with USUN and the UN leadership in an effort to lift the hiring freeze, at least to fill vacancies due to normal attrition.

18. (SBU) Holthuis described various initiatives under way to enhance Tribunal efficiency and further progress towards completion. He said that the Registry is examining ways in which to schedule more than the present six trials in its three courtrooms, noting that it might be possible to schedule contempt hearings and other short proceedings during gaps in the major trials. Holthuis also reviewed outreach and training efforts underway in Croatia, SAM, and BiH to help build up local trial capacity.

19. (C) Comment: The budget crisis is severely testing the OTP's capacity to carry out its remaining pre-indictment investigations and the Tribunal's capacity overall to continue with its six-trial maximum schedule. A quick lifting of the hiring freeze is essential not only to permit the Tribunal to complete its work on time but also for it advance the transfer of cases involving mid and lower level perpetrators back to the region for trial. All ICTY leaders are focused on the capacity of jurisdictions in the region to prosecute war crimes cases at a level that meets international standards. OTP and Chambers are particularly focused on the capacity of the Sarajevo war crimes chamber to handle 11bis cases as early as this January, since this constitutes by far the largest category of cases eligible to be transferred. OTP has also begun testing Belgrade's capacity to conduct effective and fair war crimes trials by providing the special war crimes court there with complete investigative files in two cases. If these cases go well, the Tribunal is prepared to add others in the pipeline. ICTY and USG officials shared the sense that cooperation with Belgrade is at a crossroads. The promising start of domestic war crimes trials points a clear way towards the future, but that opportunity as well as progress towards European integration will be squandered if political levels fail to produce the long overdue results with respect to fugitives. End comment.

10 (U) This cable has been cleared by S/WCI Prosper and EUR Stephens.